IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Bail Appl..No. 3915 of 2007()

CRIME NO.1065 OF 2007 OF PATHANAMTHITTA POLICE STATION

: PETITIONER

ASHRAF, S/O.ABDUL KARIM, THANIMOOTTIL HOUSE, KULASEKARAPATHI MURI, PATHANAMTHITTA.

BY ADV. SRI.V.K.SUNIL

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3915 of 2007

Dated this the 29th day of June, 2007

ORDER

Application for anticipatory bail. Petitioner is the 4th accused in a crime registered, inter alia, under Section 394 and 326 I.P.C. Accused 1 to 3 have already been arrested and enlarged on regular bail. The petitioner apprehends imminent arrest.

2. The crux of the allegations against the petitioner is that when the defacto complainant tried to enter the autorickshaw of the 1st accused at about 10 p.m on 17.12.2006, he was attacked and an attempt was made to take away the gold chain worn by the defacto complainant. Accused 1 and 2 are named in the F.I.R. Presence of two others identifiable is mentioned. It is after the arrest of the principal accused and in the course of investigation that the identity of the petitioner was revealed and he is arrayed by name as an accused.

3. The learned counsel for the petitioner prays that anticipatory bail may be granted to the petitioner. He was not in any way involved in the incident, it is urged.

4. The learned Public Prosecutor opposes the application. Sufficient indications to infer complicity of the petitioner have been collected by now, it is further submitted.

5. I am not persuaded to agree that this is a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioner. This, I am satisfied, is an eminently fit case where the petitioner must resort to the normal and ordinary procedure of appearing before the Investigator or the learned Magistrate having jurisdiction. He must then seek regular bail.

6. This application is, in these circumstances, dismissed. Needless to say, if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-